

A. In Germany 9 per cent, somewhat less than 9 per cent, and in America 34 per cent. In foreign countries other than America and Switzerland, 13 per cent.

Q. This is going from what period to what period? A. From the time I left Germany until the outbreak of the war.

Q. That is, you talk about 1929, now; is that right? A. No; '41.

Q. What is the beginning of that period? A. In the beginning of this period is December, '29, when I left Germany.

Q. And you go to December 7, 1941? A. Yes, sir.

Q. Now, you added a two-year period in which you were residing in the United States, or in Antwerp. Have you figured out the percentage since October 5th, '31? A. I would have to refigure that.

Q. I want to know something else. I want to know what time you were here until the outbreak of war? A. 1436 I didn't figure it out.

Q. Will you do so this evening, please? A. Well, I will try to do that.

Q. You will agree it would be more than 10 per cent because the two years previously you were in America and Belgium? A. I will try to figure it out.

Q. But you will agree it would be more than 10 per cent, won't you? A. I have to figure it out.

Mr. Gallagher: Could we ask: What are you trying to establish with this last questioning?

Mr. Burling: I will be glad to tell you. I am trying to show, to attack the witness' credibility by showing that he made a determined effort before this hearing board to establish that he was very, very infrequently in Germany, and now it turns out he was in Germany a great deal.

Mr. Gallagher: Even if it were true, which we deny, where is it material? What materiality does it have?

Mr. Burling: He lied to the enemy alien hearing board, and it attacks the witness' credibility, in my opinion.

The Court: I think you can raise that question after he has finished.

Mr. Burling: I will go on then.

By Mr. Burling:

1437 Q. Now, coming to the transaction which is covered on the chart by a box with a "X" painted over it, as I understand it, in 1934 you transferred the Uebersee shares to Frima; is that correct? A. Yes; about this time.

Q. And then in '36 a transaction involving the Union Bank of Switzerland took place; is that correct? A. Yes, sir.

Q. And is the following an accurate summary of what happened?

One, it was agreed between Frima and the Union Bank that Frima was transferring to the Union Bank all but three shares of Uebersee; is that right? A. Yes.

Q. Two, the Union Bank would purport to distribute the remaining Uebersee shares to the credit of clients, numbering more than ten; is that correct? A. I don't remember this detail, but along this line; yes.

Q. You don't remember the detail? A. It was more than 15 clients or so.

Q. Who handled the transaction? A. Between Dr. Henggeler and the management Bank Gesellschaft.

Q. Did Dr. Frankenberg give Dr. Henggeler instructions to do this? A. No; it was Dr. Henggeler's idea.

Q. Did he consult you about it? A. Certainly. We talked it over.

Q. But you don't remember the nature of the contract with Swiss Union Bank. A. I am wondering about the

one figure you mentioned. You said ten members, and I think there were fifteen shareholders.

Q. All right. I said more than ten. A. Oh, pardon me: I understood ten.

Q. And wasn't it agreed between Frima and the Union Bank that the bank's clients would give an option which ran first to the bank and then from the bank to Frima, so that Frima could buy back the shares at the purchase price? A. It was an escrow agreement; yes.

Q. Is my statement correct or incorrect? A. Yes, I think it is correct.

Q. Thank you. And fourth, it was agreed that the purchasers could require the bank and then Frima to buy back shares at that price, was it not? A. Yes; to the original selling price.

Q. In other words, either of you could require the transfer back to Frima? A. Yes.

Q. At the original selling price? A. Yes; including interest and charges.

1439 Q. Well, as a matter of fact, the interest was fixed, was it not, so that the so-called purchasers were to be guaranteed a dividend of 6 per cent, irrespective of how the Uebersee shares were made out? A. That is correct, yes. I cannot—

Q. Thank you. Thank you. I haven't asked you another question.

And it was further provided that there was to be a contractual obligation on the part of the so-called purchasers that they would either deliver proxies to the bank, which would then deliver them to Frima, or that the purchasers would agree to vote the shares in accordance with the Frima instructions! Isn't that correct? A. I think that is correct.

Q. And was it not further agreed that Frima would not withdraw the purchase price from the Swiss Union Bank, but would leave the purchase price in the bank as a guarantee that it would be prepared to buy back the shares? A. I think that was done.

Q. And it was also provided, wasn't it, that if Frima wished to withdraw the purchase price and substitute securities, that it must put up a margin of 40 per cent? A. Yes; that is a natural thing to do.

Q. Thank you. Was it not also provided that the Swiss Union Bank would deposit the Uebersee shares with a bank called Bank in Baden? A. I think that is part of the contract, yes.

Q. And it was even provided, was it not, that Frima should pay the Bank in Baden the deposit fee for holding the Uebersee shares? A. Yes, I think that is in the contract.

Q. Thank you. Now, will you not agree that it was a matter of no interest to the purported purchaser's whether the real value of Uebersee went up or down, because they were guaranteed their purchase price back? A. They were safeguarded, yes.

Q. They were safeguarded. And if the stock went up, it wouldn't do them any good, because Frima had the right to get the shares back, at the original price? A. Certainly. I wanted to be in control.

Q. And you remained in control, didn't you? A. By the right of repurchase.

Q. By the right to have Frima control the voting of all the shares? A. By ~~these~~ proxies, yes.

Q. And will you not agree that this purported sale to these purported Swiss stock shareholders was a sham transaction undertaken by you for the purpose of avoiding the United States personal holding company tax?

Mr. Ingoldsby: I object to that, Your Honor. The witness has testified as to what the facts are in the transaction. Whatever significance attaches to those facts, I believe attaches.

The Court: I think that is correct, Mr. Burling.

Mr. Burling: I was asking him his purpose.

The Court: You can ask him his purpose.

By Mr. Burling:

Q. Isn't it true that your purpose in going through this transaction was to void the American personal holding company tax? A. No; that is not correctly stated, Mr. Burling. Do you want to know the purpose?

Q. No; I want to ask you another question.

Did you not tell Mr. Gros that was exactly your purpose?

A. He was, at this time, negotiating with the Nazi Government about this waiver; but even in the case he would not succeed, that my father was not in immediate danger with the Niessbrauch, for two reasons—the first reason I give you, that I controlled American subsidiaries, and our dividend policy, and that therefore Overseas would not receive any dividends.

I further explained to Dr. Gros that some of the American corporations were largely undercapitalized, particularly the Harvard Brewing Company, and that for this reason, for a number of years, even if my father would 1442 be forced to establish a Niessbrauch, that nothing would come out of it.

In addition to that, I wrote Dr. Gros that this American tax which came in, I think 1934 or 1935, was a real God send. It gave me an opportunity to set up this, to make this agreement with the Bank Gessellschaft, and it gave me an explanation towards the Nazis if they got suspicious about it. I then could say, "This, as you see, is made on account of tax purposes."

In reality it was a protection of my interest, because all through 1935, to the end of the year, I discussed this problem with Dr. Gros; and even through 1936 and 1937, I was not sure whether the leading viewpoint of Dr. Gros would prevail.

And even in 1938, after the Reichsbank had admitted that our waiver was legally unassailable, even then the Reichsbank said, "But we are going to use political pressure."

And I was concerned, and afraid of this political pressure, which was brought to bear upon my father, to the end of 1939, I think it was—1938 or 1939, shortly before the outbreak of the war—and therefore I was very much pleased with the fact that I could set up these Swiss stockholders, with the excuse towards the Nazis, in case they would put on new pressure.

Q. While you were in Germany, in the years 1933 through 1939, did you hear many people talking about the Nazi Party members and SS members who were being subjected to political pressure? A. In 1934, thousands of friends of the party and party members were shot.

Q. Yes; that was the Roehm purge, was it not? A. And those things happened off and on at all times through the Nazi regime.

Q. Let me see if I understand you correctly. Your testimony is that this transfer to the Swiss stockholders, under these arrangements, was for the purpose of making it look to the German Government as if neither you nor your father owned the Uebersee assets? A. No; my father had nothing to do with it. The Nazi Government knew it was myself, you see. And even the waiver was at this time—

Q. We haven't come to the waiver, and there wasn't any waiver ever filed, was there? A. Definitely.

Q. You say there was a waiver filed? A. Certainly.

Q. Well, we will discuss that later.

At any rate, is it your testimony that this transaction here, that is to say, that the shares sale was for the purpose from concealing from the Germans the fact that you still in fact owned the Uebersee Finanz-Korporation? A. 1444 That was the main purpose.

Q. I see. That was your main purpose? A. Yes. Q. Thank you. And you used—

Mr. Ingoldsby: Pardon me, Your Honor. I think the witness was being asked about his motives for doing this. He

said that was his main purpose. If he wants to state any other purposes, I think he has the right to do so, by way of explanation.

The Court: You can ask him that later on.

By Mr. Burling:

Q. And you have explained to your lawyer this transaction, in terms of concealing from the American Government the fact that you owned the Uebersee Financ-Korporation? Is that right? A. No. That is not quite correct. I only mentioned the fact that Dr. Gros stated that I might do that. And I stated that, I think, in the middle of 1935.

Q. Now, before the year 1942, did you ever file or cause to be filed personal holding company tax returns for Uebersee, for the years 1936, '37, '38, '39, '40, or '41? A. As far as I remember, the law remained unchanged in 1936 and 1937.

Q. All right. Did you file returns for those years?—
1445 prior to 1942? A. If I might explain to you—

Q. No; just answer the question, please.

Did you file returns for 1936 and 1937, prior to the year 1942? A. I don't remember what was filed.

Q. And do you have any reason to believe that personal holding company tax returns were filed prior to the year 1942? A. Yes; I think they were filed in the years 1933, 1934.

Q. No. You didn't file a tax return for the year 1936, in the year 1933; did you?

I am talking about tax returns for 1936 and 1937, now.
A. I think they were filed.

Q. When? A. In accordance with the law.

Q. When? A. From time to time—

Q. When? A. Shortly or afterwards, they were filed every year.

Q. Don't you know they were not filed until 1942? A. I think they were filed in 1936 and 1937. And the law then

was changed, if I understand it correctly, in the year 1938.

Q. In 1941 and 1942, a law firm in which Mr. Isadore Kresel was a partner handled your tax matters; isn't 1446 that right? A. Yes.

Q. And they were also counsel for Uebersee Finanz-Korporation, were they not? A. Yes.

Q. What is the name of the lawyer who particularly handled Uebersee's tax problems? A. I think it was Mr. Marin.

You mean here on the American side?

Q. Yes. A. I think it was Mr. William Marin, in Mr. Kresel's office.

Q. Mr. William Peyton Marin? A. I think so.

Q. Will you look and see if this is not a letter signed by Mr. William Peyton Marin on behalf of Uebersee Finanz-Korporation? Look at the signature and see if you do not recognize it. A. I think that is Mr. Marin's signature, isn't it?

Q. And will you look and see if that wasn't written to the Treasury on behalf of you and Uebersee? A. Yes.

Mr. Burling: I offer it in evidence, Your Honor.

Mr. Gallagher: Just a moment, Mr. Burling. May I see it first.

1447 Q. Mr. Burling: Yes, certainly (handing the letter to counsel).

By Mr. Burling:

Q. Will you look at this letter and see if it indicates to you when the income tax returns for Uebersee Finanz-Korporation for the years 1936, '37, '38, '39, 1940 and '41 were filed? A. You mean paragraph 2, Mr. Burling?

Q. I mean paragraph 2. Would Mr. Marin's letter indicate to you when the income tax returns for Uebersee were filed for those years? A. Yes. But I am sure there

were some filed previously to it. I think it was only a re-assessment.

Q. Now will you look at paragraph 8, which has the following words—

Well, prior to the numbered paragraphs, does it not read as follows—

"Pursuant to a tentative closing arrangement made with Mr. Albert Schwartz, Internal Revenue Agent, I enclose herewith and am filing for the respective taxpayers therein named, the following:

• • • • •
"8 Personal holding company returns for the calendar years 1936 to 1941, inclusive (some in duplicate as required by law) executed on behalf of Uebersee 1448 Finanz-Korporation, A. G. by me as attorney in fact, together with affidavit of Dr. Hans Frankenberg setting forth the reasons for the late filing of each of said returns."

Does that suggest to you when the personal holding company tax returns were in fact filed? A. Yes, at this date.

Q. And they were not filed previously, were they? A. There must have been some reports filed previously. They were filed every year.

Q. Are you in possession of any copies of personal holding company tax returns which were filed every year, as you state, during the period? A. I have to check that.

Q. I request that you do so and inform me prior to the end of this trial.

Mr. Gallagher: Mr. Burling, may I ask if this affidavit referred to in subparagraph H, by Hans Frankenberg, is in your file?

Mr. Burling: I do not have it, sir.

Mr. Gallagher: You do not have the stated reasons for the late filing?

Mr. Burling: No, sir.

Mr. Gallagher: Is it in the Treasury? Have you checked on that?

1449 Mr. Burling: It may be. We have asked for the entire file.

Mr. Gallagher: But, at the present time, this is all you have!

Mr. Burling: Yes; and I call upon the plaintiff, if it is in possession of any documentary evidence, showing current filing of the personal holding company tax returns, to produce such documentary evidence, including file copies of earlier returns.

*Mr. Gallagher: Just a moment, Mr. Burling. I don't understand your demand that we should be filing personal holding company tax returns now, while you have the property vested, do you?

Mr. Burling: No. I am talking about returns for the years 1936 to 1941, inclusive.

I assert that there is at least a *prima facie* case established to show that the tax returns were not filed until 1942. And I request counsel for the plaintiff corporation to produce such returns, if they have returns indicating that they were currently filed.

Mr. Gallagher: We will look for that. And, in connection with my request to you, as to the Frankenberg affidavit referred to in that letter filed with the Treasury, and which you say you cannot locate in the Treasury Department, I ask you at this time to state whether or 1450 not the files of the Treasury Department reflect whether or not any fraud penalty was ever imposed here, or any delinquency penalty?

Mr. Burling: I do not know the answer to that.

The Court: Gentlemen, I am afraid we are going to have to move along here. We have taken a lot of time on this examination. We had better get to a close.

Mr. Burling: Yes, Your Honor.

By Mr. Burling:

Q. Is it not also true that the purchase price which the purported purchasers paid was a total of \$166,000? A. Yes; I think that was the amount.

Q. And that was about 5 per cent of the book value of the shares? Isn't that true? A. You are entirely mistaken, Mr. Burling.

Q. Hadn't you put about \$3,700,000 into Uebersee at this time? A. But you are entirely mistaken.

Q. Fine. How much had you put into Uebersee at the time you made this sale agreement? A. At the time, don't forget—

Q. Just answer the question, please. A. I had a claim, what Frima or myself had put into Overseas, and these amounts you mentioned were credited to me with Overseas.

Q. How much had you put into Overseas? A. 1451 I think I was appearing as a creditor on the Overseas books.

Q. How much did you put into the Overseas stock? A. About 11.5 million Swiss francs, that was the adjusted value. First I think it was about fifty million francs, and we had to write off about three million on account of the loss on the gold. So I had to write down my claim to about eleven and a half million.

Q. At any rate, the true value of the Overseas stock was far in excess of \$166,000! Isn't that true? A. You are entirely mistaken. I think it was even lower than this value. You see, the value of the stock is only the difference in assets against its liability.

Q. I see. Now, look at Exhibit 48-A again and I address your attention to the paragraph beginning in the middle of page 5 of the English translation. A. Page 51

Q. Page 5 of the translation. A. Yes.

Q. It begins: "These plain facts, which can be proved at any time"—

It is toward the end. A. Yes.

Q. I want to read you these words, and ask you the explanation:

1452 "These plain facts, which can be proved at any time, have become still more complicated by the fact that I shall probably have to reorganize the holding company. The reasons are as follows:

"The revised American income tax law considers all companies whose majority is held by five persons or less are private holdings, i.e. these companies are required to pay not the customary corporation taxes of 13-1/4 per cent, but the rates applying to private individuals, which are several times higher. That means practically that only such companies are recognized as holding companies which have eleven or more stockholders.

"After extended considerations I have finally found a way to meet this requirement, namely by selling to outsiders all the stocks I own. To be able to do this I have to keep my credits with the holding company on a loan account and to obligate myself towards the prospective stockholders not to claim any interest until the stockholders have been satisfied and sufficient reserves accumulated."

A. Yes, if I may say, that this claim is for this claim of eleven and a half million Swiss francs which I just mentioned.

Q. And in this letter you in effect tell Gros that
1453 August 2, 1935, is it not? A. Yes.

Q. And in this letter you in effect tell Gros that this shares sale transaction is a way around the American personal holding company tax! A. Pardon me. You have to read it in the first part. I tell him in the first part that even if a Niessbratze has to be established under force, that even then no dividends will be paid, and then in addition to the economic situation, I mention this tax situation.

Q. That is to say, you are here saying, "Even if it should become necessary to bring the Niessbrauch right into existence, it might still be dangerous; so you have to change the tax setup?" A. No. Mr. Burling, You misunderstood me. I indicate in this letter—and let me rather explain it this way:

The first part of the letter deals with legal arguments, and I said:

"Dr. Gros, I am more pessimistic than you are. I cannot share your optimism. We were hit too hard a year ago, but now conditions are a little smoother, and you might succeed. But still in my mind it is somewhat doubtful."

Q. What is somewhat doubtful? What is it you
1454 are talking about? A. I was rather pessimistic whether Dr. Gros would finally succeed in having this waiver accepted.

Q. At this time, at the time you wrote this letter? A. Yes; I was rather pessimistic, and I remained pessimistic, through all the time—

Q. I am just talking about this letter. Let us address ourselves to that. At this time you wanted Gros to persuade the German Government that there was no Niessbrauch! Is that right? A. Pardon me. It wasn't up to me to tell him that. My father had given him the order to get rid of this Niessbrauch any way he wanted to.

Q. Did you know that at the time you wrote this letter—August 2, 1935? A. Now, Mr. Burling, I now found out, last time you didn't give me a chance to read this letter, and I now found out I had spoken to my father before, as stated in the beginning of the second from the last paragraph.

Q. So that all of your testimony which went on about an hour about this letter a few days ago was wrong! Is that right? A. You didn't let me read the letter. You just pinned me down on one sentence or paragraph.

Now, I see here, in the second from the last paragraph,
I am speaking about complimentary—

1455 Q. Where are you reading from? A. The second from the last paragraph of the letter—your discussion in addition to the gift agreement.

Q. Wait a minute. I will read you the second— A. The second from the last paragraph.

Q. That is, "I thought I should explain to you"? A. No, that is not the one. The one further. The second last.

Q. That is the second last, is it not? A. No; it must be—may I show you?

Q. Please do. A. Yes, that is the one. They didn't make a paragraph, here (indicating).

Q. So now you testify that prior to having written—

Mr. Gallagher: Excuse me, Mr. Burling. I would like to have His Honor have this exhibit in front of him while you are discussing it, as I think it will save time on the redirect.

It is the letter of August 2, 1935, the last paragraph—

Is that right, Mr. Burling?

Mr. Burling: That is right.

By Mr. Burling:

Q. So now you testify, do you, that prior to August 2, 1935, you had told your father about your conversation with Frankenberg in which you asked him to hold 1456 the key as agent for Wilhelm von Opel, and that your father said he didn't want that? A. Yes.

Q. When did that conversation with your father take place? A. That must have taken place, prior to this letter—I guess about two weeks prior to this letter.

Q. And all the testimony taken the other day concerning this letter is incorrect? Is that right? A. Definitely, because you didn't give me a chance to read the letter,

Mr. Burling. I am very sorry that that happened, but it was not my fault.

Q. I think the record will show whether I have given you a chance to read the documents.

Can you fix the time and the place where you now say you had this conversation with Wilhelm von Opelt? A. It must have been in the weeks prior to this letter.

Q. Well, fix the date as accurately as you can. A. I am unable to do that.

Q. Where did the conversation take place? A. I think in Wiesbaden. And we had additional conversations, because this first draft of the declaration I think wasn't the final one we agreed upon.

Q. Now, you understand, do you not, that if the usufruct in fact arose, as opposed to a claim to create a usufruct, then it would be impossible to waive it without a license from the German Government?

Mr. Boland: I object, Your Honor. I think that calls for a legal conclusion. This witness is not qualified for that.

Mr. Burling: This witness has spent years on that, and I want to know what his state of mind is.

The Court: What is the question?

The Reporter (reading): "Question: Now, you understand, do you not, that if the usufruct in fact arose, as opposed to a claim to create a usufruct, then it would be impossible to waive it without a license from the German Government?"

The Court: I don't think we can take his opinion on it.

Mr. Burling: I don't want his opinion, if Your Honor please, as a legal opinion. I want it as bearing on what Mr. Gallagher intended to do on redirect.

The Court: Let us get on to the redirect. I am afraid we are going rather far afield, anyway.

Mr. Burling: If Your Honor please, perhaps to save

time I could ask if course! will concede that the answer to Interrogatory 7 is inaccurate, in that it states that the 97 shares of Uebersee were, during the period of this Swiss Union Bank transaction, in the possession of the named clients of the bank, since it appears from 1458 the testimony that they were in the possession of the Bank in Baden.

And I further ask the concession that the answer to Interrogatory No. 8 was wrong, in so far as it recites that the names of the beneficial owners of the stock of plaintiff corporation were as stated in the list of Swiss

Mr. Gallagher: That should be corrected. That No. 8 obviously is in error. I concede that. But I do not understand your request in connection with 7.

Mr. Burling: I do not believe the testimony supports the answer, in so far as it recites that the shares were in the possession of the Bank Gesellschaft. It appears they were in the possession of the Bank in Baden, pursuant to the escrow agreement.

Mr. Gallagher: If you want to correct it to physical possession, or constructive possession, or pursuant to the escrow agreement, we will gladly change it to that.

Mr. Burling: All right; thank you.

By Mr. Burling:

Q: Now, by 1939 Uebersee had an investment in a plantation in Tanganyika, valued at about seventy thousand dollars! Isn't that so? A. I acquired that with German marks in 1932.

Q. It was an investment of Uebersee's in 1939, wasn't it?

A. Yes.

1459 Q. And it was carried at a Swiss franc value equal to about \$70,000? Is that right? A. I don't recollect the figure. Approximately I think it is correct.

Q. And throughout the month of October, 1939, you

were a German national, were you not? A. At this time my application was pending for naturalization.

Q. But you were a German national, nevertheless.

Mr. Boland: Your Honor, may I ask counsel to clarify what he means by a "German national"?

Mr. Burling: Citizen of Germany.

Mr. Boland: But you are using them synonymously.

Mr. Burling: I am using them as used in the Act of 1940.

By Mr. Burling:

Q. And is it not true that in 1940 you caused Uebersee to tell its agents in Tanganyika to report to the British Enemy Property Custodian that the Tanganyika plantation was Swiss owned?

Mr. Gallagher: Which year is this, Mr. Burling?

Mr. Burling: October, 1939.

Mr. Gallagher: You stated 1940.

Mr. Burling: Thank you.

The ~~Witness~~: I don't remember that that is possible.

By Mr. Burling:

1460 Q. Do you remember that the plantation was seized by the custodian? A. I think a report had to be filed—

Q. Do you remember that the plantation was seized by the custodian, after the war between Germany and England started? A. Yes, I remember that.

Q. And didn't you cause Uebersee to report to the custodian that the plantation was owned by Uebersee, and Uebersee was Swiss owned? A. Yes.

Q. And was that true or false? A. It was at this time technically owned by the stockholders. And I personally, Mr. Burling, in 1940, as well as in the report you just

yesterday read into the record, my report to the Treasury, I mentioned that I personally was the owner of this plantation.

Q. When did you do this? A. In 1940 and 1942.

Q. Did you ever report that to the British? A. In 1940 to the British, yes, in Gibraltar.

Q. After you had acquired your Liechtensteinian citizenship, but not before? Is that right? A. Yes.

Q. In other words, you know that before you 1461 became a Liechtensteinian citizen, you were the beneficial owner of the plantation in Tanganyika, and that was concealed from the British custodian? Isn't that so? A. It wasn't concealed from the British custodian. In fact; this plantation, since the time I bought them, they were called Opel Estates. Everybody in the colony knew they were my plantations. If I wanted to conceal something, they certainly would not have been called "Opel Plantations". That is a very rare name.

Q. Now going back, Adler & Company, prior to 1931, had been the Opel family bankers in Zurich for many years, had it not? A. No, definitely not.

Q. At any rate, you dealt with— A. Which year?

Q. 1931. A. 1931, no.

Q. At any rate, in 1931, in the spring—

Mr. Burling: And I think I can say, Your Honor, I am on my last topic. And I know Your Honor's patience is wearing thin, but I will sit down in a few minutes.

The Witness: As far as I know, I can only speak for myself and what I know of my father's business. But to the best of my knowledge, no member of my family ever did any business with Adler & Company except myself.

1462 By Mr. Burling:

Q. I see. A. And I myself, the first business I did was in 1931.

Q. And in the spring of 1931 you had business with Frankenberg, didn't you, Mr. von Opel? A. With the Adler Bank, yes.

Q. With Frankenberg, didn't you? A. He represented the Adler Bank.

Q. Well, that is the answer; thank you.

And Frankenberg was an old acquaintance of your father's when you first started doing business with him, wasn't he? A. My father knew him since about after the first world war, and so did I. He was a casual acquaintance. But he was no business connection of my father's.

Q. Now, one of the reasons which particularly interested you, in the spring of 1931, in purchasing Uebersee, was that Frankenberg agreed to become a member of the board of directors! Isn't that so? A. You are now talking about the spring of 1931, Mr. Burling?

Q. Yes, sir. A. In the spring, 1931, Dr. Frankenberg wasn't at all in the picture, because at this time I only had a right to acquire 60 per cent of the capital stock.

Q. All right. A. You are mixing up those two 1463 separate deals.

Q. At any rate, one of the reasons which ultimately caused you to buy Uebersee was the fact that Frankenberg agreed to become a member of the board of directors; wasn't it? A. I wouldn't put it this way.

Q. All right; you won't; thank you.

You did put it this way in an affidavit which you filed with the Treasury Department, didn't you? I will read you a sentence and see if you can recall it.

Mr. Gallagher: What is that, Mr. Burling?

Mr. Burling: The affidavit of August 26, 1941—

"Another circumstance which enticed me to buy this corporation was that Dr. Hans Frankenberg, a partner in Adler & Company, agreed to become a member of its board of directors."

The Witness: It was one of the reasons, yes—but not the single reason, Mr. Burling.

By Mr. Burling:

Q: And your father suggested to you that Frankenberg should become managing director of the holding company? A. I asked my father.

Q. Did he or did he not suggest it, sir? A. I asked him—

Q. Did he or not suggest that Frankenberg be 1464 come managing director? A. I do not recollect, sir.

Q. Didn't you so state under oath? A. It is possible, yes, sir.

Q. Didn't you state—not that it was possible—that he did suggest this? A. Yes.

Q. You did swear to that, didn't you? A. Yes.
Q. All right. And you had a conference with Frankenberg in which you asked him if he would be willing to serve as a member of the board, and managing director of the Uebersee Finanz-Korporation, A.G., did you not? A. Yes.

Q. And he stated he would do so, did he not? A. Yes, and he did it.

Q. And when you invested in the stock of Spur Distributing Company, you frequently consulted with Dr. Frankenberg in his capacity as managing director of Uebersee, did you not? A. He always—

Q. Did you not? A. Yes.

Q. And in the fall of 1932, you discussed with Frankenberg your concern over the future gasoline supply 1465 of Spur, did you not? A. Yes.

Q. And when you went into the oil production field in 1933, you and Frankenberg jointly handled this, did you not? A. I mentioned the situation to him, and he advised it would be a profitable investment.

If I may add something, Mr. Burling, I think yesterday—

Q. Please don't volunteer. I am trying to finish. A. Pardon me.

Q. Didn't you say, in your gold case affidavit, as follows?—

"In these corporations Uebersee during 1933 invested an aggregate of \$756,000. Dr. Frankenberg and I intended on behalf of Uebersee greatly to increase its investments in these oil companies and would have increased them were it not for the impounding of the company's gold in the United States in March, 1933, as hereinafter described."

Q. You state that under oath, did you not? A. Yes, that is correct.

Q. And you further swore, did you not, at folio 185—"It was by reason of these pending investments on behalf of Uebersee Finanz-Korporation, A. G., that Dr. Frankenberg and I caused the liquidation of bonds held for its account as above described."

1466 Q. A. That is correct.

Q. And in December, 1932, you had a discussion with Frankenberg, in Frankenberg's capacity as managing director of Uebersee, did you not? A. I had very many discussions.

Q. With Frankenberg in his capacity as managing director? A. Yes.

Q. Thank you. And in February, 1933, Frankenberg told you what to do with respect to certain cash holdings—

A. He advised me—

Q. Didn't you? A. On account of the bank holiday.

Q. Didn't he tell you— A. He advised me, yes, sir.

Q. And you did purchase gold, didn't you? A. Yes.

Q. And the gold was stored with Ladenberg, Thalmann & Company, wasn't it? A. Yes.

Q. And that was suggested by Frankenberg, wasn't it? A. Yes; I think Dr. Frankenberg was a former partner of Ladenberg & Thalmann, in Frankfort.

Q. Now, is your property blocked in Switzerland by the

Swiss Compensation Office! A. The situation in
 1467 Switzerland, I have no property in Switzerland
 which is of any value to me right now.

Q. But there is a blocking order against your property,
 is there not?

Mr. Gallagher: Your Honor, I wish to enter an objection
 to this line of inquiry of Mr. Burling, wherein he is
 asking what action the Swiss have taken. There is a long
 story behind it, and we are not in any position to give
 this court any information of this situation, until we have
 gotten further information from Switzerland. But at the
 moment we submit any action taken by the Swiss as to
 any personal assets is immaterial, as far as this proceeding
 is concerned.

Mr. Burling: I think probably my friend's position is
 right.

If you will agree you will not raise—

Mr. Gallagher: No, I will not agree to that. We are
 checking that situation now, Mr. Burling, and I think you
 are well aware of what we are checking.

Mr. Burling: I will save any point I have, for recross,
 and will withdraw the question now, Your Honor.

The Court: All right.

Mr. Burling: And I have only one further question—

By Mr. Burling:

Q. Is it now your assertion that Defendant Exhibit 49
 relates to your personal books? A. What is called
 1468 here "Consortium Q"—yes, pardon me. These are my
 personal books Mr. Burling.

Q. I see. A. And also—

Q. Wait a minute. This is a book about which I ex-
 amined at considerable length, and you did not recognize
 it as your personal book. Is that correct? A. Pardon me.
 You asked me to explain if that is the income account of
 2.6 million in Overseas.

Q. I am talking about this book here, Defendant's Exhibit 49.

Mr. Gallagher: Just a minute, Mr. Burling. If I recollect correctly, you only showed him one page at that time, page 16—

Mr. Burling: I think that is correct.

Mr. Gallagher: And you prefaced the statement that it was a Uebersee book, and I think the record will show that to be correct.

Mr. Burling: If Your Honor please, I can say I have no personal knowledge of Uebersee's books. We were given this book as being a book which was a record or account of book of the plaintiff. I had no knowledge other than the fact—

The Court: I think we are arguing here. What is it you want to find out about it?

Mr. Burling: I now want to cross examine. I don't believe the witness.

1469 The Court: What do you want to find out?

By Mr. Burling:

Q. Are there any other books and records you know we have been shown which are your personal account books and not the accounts books of Uebersee? A. I couldn't make such a sweeping statement, Mr. Burling. I only know you asked me to clear up what this page 16 meant, and that is what I did. And you did not only get the books from Overseas, Mr. Burling; you also got the books of Frima, and this is a Frima book.

The Court (to the witness): Just answer his questions.

Mr. Burling: I would like either for the witness or his counsel to give us a statement as to what books they were in error on when they gave us the books. They told us they were giving us the books of Uebersee.

Mr. Gallagher: I can make a statement, Your Honor.

The Court: Don't make a statement. Bring it out on redirect.

Mr. Gallagher: All right, sir.

As to redirect, Your Honor, I think we could more rapidly dispose of Mr. von Opel in the morning, if Your Honor please, if Your Honor would be disposed to adjourn a little earlier than indicated.

The Court: That will be all right.

Mr. Gallagher: And, if Your Honor please, I 1470 would like to get rid of this one point as to which

Mr. Burling made quite a bit of the fact that, in response to the interrogatories 27 and 28, which were:

"27. Describe the nature of plaintiff's interest in bauxite mines in Hungary at all times from October 5, 1931, to June, 1942."

And the next one, Your Honor, Interrogatory 28—

"State the nature of plaintiff's interest in any corporation holding or holding bauxite mines in Hungary, or bauxite mining rights in Hungary, at all times from October 5, 1931, to June, 1942."

And then he said the plaintiff has answered in this fashion—the answer to 27:

"The plaintiff had no interest in bauxite mines or bauxite mining rights in Hungary at any time."

And the answer to 28:

"The plaintiff had no interest in any corporation holding or owning bauxite mines or mining rights in Hungary from October 8, 1931, to June, 1942."

Now, he failed to read, which I want to read, the following interrogatory, so that Your Honor is cleared up on it—the next interrogatory being, their next interrogatory, number 29:

"Describe in all detail all actions taken by plaintiff or by any agents of plaintiff, including Fritz von Opel, concerning the mining of bauxite in Hungary at all times from October 15, 1931, to June, 1942."

We responded as follows—and at the time it was prepared, we thought the stock had merely been hypothecated to Mr. von Opel; but for the purposes of this inquiry it made no difference whether he owned it, or the plaintiff. However, here is our answer:

"Answered as to plaintiff in responses to interrogatories 27 and 28,"—in which it was stated that plaintiff had no interest—

"However, Fritz von Opel organized the Transdanubia Bauxite, A.G."

Mr. Burling: You are reading that unintelligently, Mr. Gallagher—

"Answered as to plaintiff in responses to interrogatories 27 and 28. However, Fritz von Opel organized the Transdanubia Bauxite, A. G., having a capital of 300,000 pengos party paid in. This corporation owned bauxite mining rights in Hungary."

Mr. Gallagher: All right, Mr. Burling.

The Court: Now, you gentlemen have been arguing this case all the way through, for beginning to end, and I have gone along with it, because I don't want to control the way you gentlemen run your case. But so many of the questions are argumentative, and there have been 1472 so many of these little sallies.

I am going to give you plenty of time to argue it. Those things don't make any impression on me, until the case comes to an end. I have been trying cases as a lawyer for 25 years, and as a Judge for ten years. I don't draw any conclusion until I hear the argument at the end. I think if you will just keep to the questions, and have the argument at the end, we will save a lot of time.

I don't want to interrupt either one of you, because I know you have a complicated case and a good many questions. But I promise to give you a full argument on it, on both sides.

(To Mr. Gallagher): You want to stop here?

Mr. Gallagher: Yes, Your Honor. I think it would be more expeditious if we did.

The court: All right, until 10 o'clock.

(Accordingly, at 3:55 p.m. the trial was adjourned until 10 o'clock tomorrow morning, Wednesday, December 22, 1948.)

1475 FRITZ VON OPEL, returned to the stand and was examined and testified further as follows:

Redirect Examination

By Mr. Gallagher:

Q. Mr. von Opel, during the close of yesterday afternoon's session you were answering Mr. Burling and you gave him a breakdown of the time you had spent between 1929 and 1931. And as I recollect that breakdown in general it was to the effect that approximately 35 per cent of your time during that period had been spent in the United States, 35 per cent in Switzerland, 9 per cent in Germany, and the remainder of the time in other countries.

At that time Mr. Burling asked you to prepare a breakdown from October, 1931, until the end of 1941. Have you prepared such a breakdown? A. Yes.

Q. Would you now state for the record what that breakdown reflects as to where you spent your time from October, 1931, until the end of 1941? A. From October 5—

Q. From October 5, 1931, would you read that breakdown? A. I spent in Switzerland 41 per cent of my time; in the United States, 30 per cent; in various countries, 14.5 per cent; in Germany, 10.1 per cent; and interned and unaccountable, 4.4 per cent.

Q. All right. Now, Mr. von Opel, in connection with that breakdown, did you also prepare a statement which would

reflect the reasons for each of your trips to Germany during the years 1931 to 1941?—the 10 per cent figure you were speaking of? A. Yes, I did.

Q. Would you state for the record the purposes of each of the visits during that period of time, year by year, commencing with 1932? A. In 1931, I saw my father shortly after my return from the United States, and I saw also an architect in Berlin.

Q. All right—1932. A. Yes.

Mr. Burling: Excuse me. The witness said 1931.

Mr. Gallagher: Yes, and now I am asking about 1932.

The Witness: In 1932 I paid a visit to my sister. I saw this architect again. And I was in Berlin trying to 1477 release about a hundred thousand blocked marks I had there, for which I bought this Tanyanya farm.

By Mr. Gallagher:

Q. All right; now 1933. A. In 1933 I was there to purchase furniture from an interior decorator, in Berlin.

Q. Yes. A. In 1934, the foreign funds control proceedings against my father began, and I had of course several conferences in these matters.

Q. How much time did you spend in Germany during 1934 in connection with those proceedings? A. I should say altogether I think twice, each four weeks.

Q. For a total of about eight weeks, in 1934? A. Yes.

Q. In connection with the proceedings? A. Yes.

Q. All right. What about 1935? A. In 1935 these proceedings were still going on; and in so far as I had to transfer a number of marks out of Germany again.

Q. Was that in connection with the Niessbrauch? A. No. I had made a payment to the Reichsbank of 850,000 marks.

1478 But I immediately sold these marks to British and other exporters; and so with a slight loss I got immediately rid of this marks obligation.

Q. All right; and in 1936? A. And, pardon me, in 1935, of course, I had several discussions with my father in respect to this Niessbrauch, his renunciation of the Niessbrauch.

Q. The renunciation of the Niessbrauch. Now, in 1936? A. In 1936 the criminal proceedings against Mr. Deku started.

Mr. Burling: Will you fix which Mr. Deku, please?

Mr. Gallagher: This was Mr. Erich Deku, the brother of the Mr. Deku who testified.

The Witness: And I had personally conducted, so to say, the investigation. I wanted to protect my father. My father was about to lose his entire fortune, and I was the main witness in the proceedings.

By Mr. Gallagher:

Q. How much time did you spent in Germany in 1936 in that connection? A. I think I spent there one week, three weeks, two weeks, and four weeks.

Q. That is ten weeks in Germany in connection with the Deku trial? A. Yes.

Q. All right; now 1937. A. And also in 1936 I had 1479 to pay, as you remember, income taxes for the sale of the Opel-shares in America. And for tax purposes I had to show what the value of these shares was in Germany.

Q. That is right. A. And, due to American regulations, I had to go back to 1912, or even prior to this date, and I had to spend many weeks to find these old records in various offices and government places.

Q. All right. Now, 1937? A. In 1937, I was witness in a lawsuit against my father. He had acquired a forest, and some twisters, some small hurricane, had blown down part of the forest, and a lawsuit was involved, and I was a witness in this lawsuit.

Q. And how long were you in Germany in that connection

in 1937? A. And I also was interested in the bankruptcy proceedings of the Union Bank, because according to the court records, about six million marks had disappeared, and according to my own investigation about four to four and a half million marks; and I was busy to find out where this money had gone:

Then in 1938, both of these lawsuits—

Q. How much time did you spend in 1937 in connection with both of those matters you have just mentioned?

1480 A. I think I was there twice, two weeks each, or three weeks each.

Q. So it was four to six weeks in connection with those proceedings? A. I would say four to five weeks.

Q. All right. Now, in 1938? A. In 1938 both of these lawsuits, the forest lawsuit, as well as this bankruptcy proceeding, were still going on. And I also spent eight or ten days on the estate of my father.

Q. All right. Now, 1939? A. In 1939 I had a compound fracture, and my Swiss doctors had advised me to see some specialist in Germany, and go to a cool climate. And I spent two weeks and four weeks in Germany.

Q. So that it was six weeks altogether in 1939? A. Yes.

Q. And in 1940? A. That was after the outbreak of the war, and I wasn't there.

Q. And in 1940 is when you came to the United States and have remained ever since? A. Yes.

Q. All right; thank you.

Now, Mr. von Opel, you stated earlier in your testimony that when you left Germany in 1929 you gave notice 1481 to the authorities in that connection. Is that correct?

A. Yes, I did.

Mr. Gallagher: I will ask to have this marked.

(The document referred to was marked for identification as Plaintiff's Exhibit 83.)

By Mr. Gallagher:

Q. I will ask if you can identify Plaintiff's Exhibit 83?
A. Yes; it is registration of departure, a copy of it.

Mr. Gallagher: I now offer this Plaintiff's Exhibit 83,
Your Honor.

Mr. Burling: No objection.

(The document previously marked for identification
Plaintiff's Exhibit 83 was received in evidence.)

By Mr. Gallagher:

Q. Now, Mr. von Opel, Mr. Busling wanted to know who
was going to testify under oath about "Consortium O". A.
I can do that.

Q. All right, and I have several questions I want to ask
you about it. At the time he was talking about Consortium
O, he prefaced his remarks, on page 968 of the transcript,
with discussing Uebersee and its books, and then showed
you Defendant's Exhibit 49, a photostat of page 16 of a
book.

I will ask you now to look at this book which I will hand
you.

1482 Mr. Gallagher: And I would like this to be marked
first, please.

(The book referred to was accordingly marked for iden-
tification as Plaintiff's Exhibit 84.)

By Mr. Gallagher:

Q. Plaintiff's Exhibit 84, and first I will ask you what
this book is. A. This is my private account book.

Mr. Burling: If Your Honor please, I move to strike that,
on the grounds that plaintiffs are estopped to make this

point. I believe it will not be denied that more than a year ago Mr. Richard Connor, then in charge of this case for the plaintiffs, and Mr. Gallagher's partner, handed the book to Mr. Baum and Mr. Laufer—

Mr. Gallagher: All books, wasn't it?

Mr. Burling: —asserting that it was a book of account of Uebersee. We have continued to believe that, up until this moment.

Furthermore, this witness himself first identified the record.

But my primary point is that we were told by plaintiff's counsel that this was a record of Uebersee.

Furthermore, the document which we have asked for and have not been given—and I am sure it is because it is lost, and I don't mean it has been secreted by counsel—recites that Dr. Frankenberg has removed the following books of Uebersee, not of von Opel, but of Uebersee, to be taken to America. And one of the books of account referred to in that letter is this book which is before the witness.

Mr. Gallagher: Your Honor, I can explain that whole situation. It is very simple.

The Court: I understand you take the position that it is a mistake?

Mr. Gallagher: That it is a mistake, and it will show from other pages of the book that it is not a Uebersee book.

The Court: You needn't argue, if you say it is a mistake.

Mr. Gallagher: It is a mistake.

The Court: And I will overrule the objection on the question of estoppel—and, of course, I will permit you to argue the point.

By Mr. Gallagher:

Q. Page 16 of the original of this page photostated by the defense and which is their Exhibit 49—and at that time,

as you will recollect, Mr. Burling was asking you whether or not this figure did not reflect 80 per cent of income, in the amount of two million point six. Will you state what those two pages do reflect? A. That has nothing to do with income whatsoever. It is a mere summary of all transactions in the United States.

1484 Mr. Burling: I move to strike that answer, on the ground it is not responsive. The question was, what do the pages reflect, and the witness has not stated what the pages reflect, but what they don't reflect.

By Mr. Gallagher:

Q. What does it reflect? A. It is a summary of all transactions in the United States.

Q. And if I understand you correctly, it merely shows all the transactions? A. Yes, just a summary; and the figure, as such, is meaningless.

Mr. Gallagher: I would like to show you this, Your Honor, and then turn to another page. This is just tradings, and the figure here is not a total of anything, but the amounts of tradings, a meaningless figure, as far as that is concerned.

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 83 and ask you what this book is. A. That is a similar book of my own accounts in Swiss francs.

Q. And I direct your attention to page 31 of this book and ask you what the figures on that page reflect. 1485 A. These are transactions in Swiss francs, similar to the dollar transactions in the other book.

Q. This is the same transactions reflected now in francs? A. Not the same transactions—transactions in Swiss francs, whereas this book—

Q. Is in dollars? A. Is in dollars.

Q. I see. I now direct you—

Mr. Gallagher: And first of all, Your Honor, just so you can follow my questions (indicating), these two pages here reflect the transactions in Swiss francs.

Mr. Burling: May I ask, Mr. Gallagher—

Mr. Gallagher: Why don't you come up here, Mr. Burling, and follow us?

Mr. Burling: May I ask if you have had the witness identify this book?

Mr. Gallagher: Yes, that it reflected transactions in Swiss francs, whereas that reflected them in dollars.

By Mr. Gallagher:

Q. I now direct your attention to page 16 of this same exhibit, Plaintiff's Exhibit 85, and ask you what those reflect. A. They show the relationship of my personal account to Overseas Finance Corporation. They show 1486 whether Overseas Finance Corporation was crediting me or debiting me.

Q. It shows how you stand in Uebersee? A. In relation to Overseas.

Q. I see. And is it correct to say that this page 31 in Plaintiff's Exhibit 84 is a recompilation of all the transactions shown throughout this book? A. Yes, it is correct. And all those transactions are reflected in the balance sheet of Overseas.

Mr. Gallagher: (Indicating to the Court): This shows the transactions on these other pages, they are compiled on that page.

The Witness: May I add here that these transactions appear in the Overseas books in the first year, 1932, under the name of Fritz von Opel; in the next year, under the name of Consortium O; and in the years thereafter as Firma Verwaltungsanstalt.

By Mr. Gallagher:

Q. All right. Just a moment. You are getting a little ahead of me.

I now show you Plaintiff's Exhibit 86.

Mr. Burling: I object; unless this witness testifies as a matter of his personal knowledge he knows that is a book of Uebersee.

Mr. Gallagher: This is one of the books produced in response to your motion.

1487 The Court: Ask him the question.

By Mr. Gallagher:

Q. Mr. von Opel, I show you Plaintiff's Exhibit 86. Can you state what this book is? A. That is a book of Overseas.

Mr. Burling: I object, if Your Honor please, on the ground that the witness testified he was not familiar with the books. He has no personal knowledge whether that is a book of Overseas or whether it is a book I wrote last night. He doesn't know anything about it, of his own personal knowledge.

The Court: Find out whether he has personal knowledge of it.

By Mr. Gallagher:

Q. Mr. von Opel, of your own personal knowledge do you know if this is an Uebersee book? A. Mr. Burling asked me to study the matter. So I reconstructed—

Mr. Burling: I object, Your Honor. What this man is doing now is stating that some books the lawyers for Overseas tell him are Overseas books, are Overseas books, and he is so identifying them. He never saw the books until they were in Mr. Gallagher's office.

Mr. Gallagher: That is not correct, Your Honor. We didn't tell him they were Overseas books.

1488 The Court: Don't specify. Just ask him the question and if he knows it, and how he found out,

By Mr. Gallagher:

Q. Do you know these are the Uebersee Finanz-Korporation books? A. They must be the corporation books. They were sent over from Switzerland.

Mr. Burling: I object to that, Your Honor. He has no knowledge.

The Court: I agree with that.

(To the witness): Don't testify, unless you know it of your own knowledge, by having seen it, or some other circumstance, other than a deduction.

By Mr. Gallagher:

Q. Mr. von Opel, can you tell, by looking at pages 70, 71, and 72 of this Plaintiff's Exhibit 86 that these are your transactions in Uebersee and reflect what you did in Uebersee? A. I remember it because it is shown in the balance sheet of Uebersee. I have not seen the books, but I have seen the balance sheets of Uebersee, and the same figures are reflected in Overseas' balance sheets.

Q. The balance sheets, which we will come to, will reflect these figures in the books, and you are familiar with the balance sheets? A. Yes.

1489 Mr. Burling: I move to strike the answer, Your Honor, because obviously the witness has not looked at the figures in detail while testifying. He has said he hasn't seen the books, and the fact that certain figures may appear in balance sheets which are not in evidence, and also appear here, doesn't identify them as books of the plaintiff corporation.

Mr. Gallagher: This is the first time they have raised the contention in all these weeks that this is not an Overseas book.

The Court: I think there have been a good many items of evidence that might have been objected to, that have not been objected to up to now; but, I have to rule on the objections when they are made. And if he doesn't know of his own knowledge that this is an Uebersee book, and you want to introduce it as such, I am afraid I will have to get you to identify it from some other source.

The fact that he has transactions in there, doesn't negative the possibility that it might be John Jones' book. We have to have those identifications in court, unless you stipulate on them.

Mr. Burling: May I say, Your Honor, I refuse to stipulate; because as late as yesterday afternoon, we were arguing about whether the books were Fritz von Opel's books or Uebersee's books, and I certainly don't know.

The Court: All right.

1490

By Mr. Gallagher:

Q. Mr. von Opel, let me ask you this: It has been testified previously in the proceedings, has it not, that you were Frima? A. Yes.

Q. And that Frima owned the stock of Uebersee? A. Yes.

Q. And on page 72 of this book appears the heading "Frima", does it not? A. Yes.

Mr. Burling: I object to Mr. Gallagher's showing an unidentified book of account to the witness and questioning him about it.

Mr. Gallagher: I am trying to identify it indirectly, Your Honor.

The Court: That is the trouble. We have to authenticate the book by someone who knows something about it. That is the objection.

Mr. Burling: If Your Honor please, I would like to state for the record that I am not merely disputatious, but I feel very strongly that in a four million dollar lawsuit the plaintiff corporation, if it wanted to make arguments on this book, should have brought the bookkeeper from Switzerland.

Mr. Gallagher: Your Honor, I might say at this point that they have all this man's assets here in this country. How are we going to get the money to bring people here?

The Court: I cannot take a position as to what you ought to do, or not. All I can do is rule on your objections.

By Mr. Gallagher:

Q. Mr. von Opel, have you ever seen any of the Uebersee books when you were in Switzerland? A. No; only the balance sheets.

Q. You haven't seen the books. You state that you have seen the balance sheets of Uebersee? A. Yes, I have.

Q. I show you Plaintiff's Exhibit No. 87, and I will ask you if you can state what that is. A. That is a balance sheet for the year 1932.

Q. A balance sheet of whom? A. Of Overseas.

Q. I direct your attention to the first page thereof.—

Mr. Burling: May I see it, please?

Mr. Gallagher: We have just this sheet. If you will come over here, Mr. Burling, and follow me while I am asking it.

By Mr. Gallagher:

Q. I direct your attention to the first page thereunder "4"; and will you state what that reads? A. Under "current accounts", it shows that Fritz von Opel owes to Overseas an amount of 525,395.50 Swiss francs.

1492 Q. And what was the nature of that debt of yours to Uebersée at that time? A. I don't recollect that.

Q. All right.

Mr. Gallagher: I now offer this in evidence.

Mr. Burling: No objection.

The Court: It is received.

(The document referred to was received in evidence as Plaintiff's Exhibit 87.)

The Witness: I presume it has to do with the payment of capital into Overseas.

By Mr. Gallagher:

Q. And I will now show you Plaintiff's Exhibit 88 and ask you if you can identify that exhibit. A. That is the balance sheet of the next year, of the year 1933.

Q. And I direct your attention to number 4, and will you state what that reads? A. There, under "current account", it shows that Consortium O owes to Overseas an amount of 588,790.55 Swiss francs.

Q. Now, directing your attention back to Plaintiff's Exhibit 87 in this connection, is this the same amount under Consortium O, with the addition of some 13,000 Swiss francs as appeared in Plaintiff's Exhibit 87 under 1493 the heading Fritz von Opel? A. Yes, sir. In the first year it was called Fritz von Opel, and then the next year "Consortium O."

Mr. Gallagher: I now offer Plaintiff's Exhibit 88.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 88.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 89 and ask you if you can identify that exhibit. A. Yes; that is a balance sheet for the year 1934.

Q. I direct your attention to the second page of that balance, under the numeral 3, and ask what the fifth line thereunder states. A. It states that Frima trust fund has claim against Overseas of 6,095,011.85 Swiss francs.

Q. And if I recollect your previous testimony, Frima trust was founded in 1934. Is that correct? A. Yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 89 in evidence.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 89.)

By Mr. Gallagher:

Q. Going back for just a moment, Mr. von Opel, do you know who commenced the negotiations in Germany 1934 between your father and General Motors, subsequent to October 17, 1931, when you had demanded that General Motors purchase your Opel shares pursuant to the escrow? A. General Motors started that.

Q. General Motors? A. Yes.

Mr. Burling: I object and move to strike; on the ground it is hearsay. The testimony is that Fritz von Opel was in the United States when this happened. He could not have personal knowledge, except hearsay, of what happened in Germany at that time.

The Court (to counsel for plaintiff): Do you want to bring out that he had any personal knowledge?

By Mr. Gallagher:

Q. Did you have any personal knowledge, Mr. von Opel?

A. Yes; my father informed me about it, after I came back from the States.

The Court: That is, hearsay. I guess I will have to strike it.

Mr. Gallagher: All right; we will drop it, Your Honor.

By Mr. Gallagher:

Q. Now, turning to just one more topic, Mr. von Opel. Will you explain briefly to His Honor the Transdanubia picture during the thirties, up until 1941, and stop at that point? Just explain what had happened and what

1495 Transdanubia was all about, in your own words.

A. Transdanubia was founded in 1935. It was through all the years inactive. I think it was in 1936 when I contacted the Bauxite Trust, asking whether they would operate the mines for me. They put out about a thousand tons of bauxite, and then stopped.

In the years between 1937, up to 1939 or 1940, the property was involved in lawsuits, and no production of any amount was ever started. However, Mr. Koranyi stole considerable amounts of bauxite out of adjoining properties, for which I had to pay damages and even wages.

We produced some bauxite in surface production, a rather small amount, I think about a thousand tons; and then the mine on the surface was exhausted, and my representatives suggested to go over to deep drilling.

In the meantime, we had made some test drillings and we actually found considerable amounts of bauxite. But I did not want to invest any further capital in Hungary, on account of the fact that it was a blocked currency; it was a one-way street. You could bring capital into Hungary, but at the time you couldn't take anything out of there any more.

In this connection I think I have to go in a few words into the problem of blocked currencies. Mr. Burling yes-

terday read out of the World Almanac some figures of free currencies. But those figures are entirely meaning-
1496 less.

For instance, now, the official exchange rate of the British pound is slightly above four dollars for the pound. In reality you can buy in New York any amount of British pounds at three dollars a pound.

The same relates to the German marks. In the World Almanac, the German mark is shown with 40 cents for the mark. In reality you could buy marks with 20 cents, with 10 cents, and at even below this amount.

The whole system of foreign currency control was more or less an economic warfare, comparable to the saying, "Heads I win, tails you lose." You could go into a country, and you had to pay dearly for the currency; but you could not re-transfer it out of the country. And that also became the case with Hungary, and therefore it was absolutely senseless to continue operations there.

Q. All right; just a moment, please.

Now, Mr. Burling asked you, during your cross examination, about Defendant's Exhibit 68 and 69, I believe, which were affidavits executed in the summer of 1941 by you and by Mr. Kresel, in which the affidavit stated that the mines had been leased. A. Yes, sir.

Q. I now show you Plaintiff's Exhibit 90-A, which is the Hungarian original, Plaintiff's 90 being a translation thereof, and ask you if you can identify that letter.
1497 A. Yes; that is a letter I received from Transdanubia in about April or May, 1941.

Q. In connection with Transdanubia? A. In connection with the business affairs of Transdanubia, yes.

Mr. Gallagher: I now offer Plaintiff's Exhibit 90; and I would like to pause a moment while Your Honor reads this, before taking up the discussion afterwards.

(The documents referred to were marked and received in evidence as Plaintiff's Exhibits 90 and 90-A.)

The Court: All right.

By Mr. Gallagher:

Q. Now, that letter summarizes, as I understand it, Mr. von Opel, what the situation was in connection with Transdanubia. A. For the year 1940 and up to the spring of the year 1941.

Q. After you received that letter, did you send a cable to the parties or in any ways communicate with them? A. Yes. In the letter, they asked me to change my mind, and I wired them that I would stick to my decision to get rid of the mine.

Q. Do you recollect the substance of the communication to Transdanubia in response to their letter?

1498 A. Only faintly. They wanted me to reverse my decision, and I told them they should go ahead and either sell or lease.

Q. I show you Plaintiff's Exhibit 91. Can you identify whose writing that is? A. That is my handwriting.

Q. What is this document? Can you state? A. Yes, that is in my handwriting, my draft of the wire to the corporation.

Q. After having read that— A. I have read it.

Q. —was that prepared at the time you sent it? A. Yes; it was my reply.

Q. After having refreshed your recollection from that draft, can you state what the contents were of the cable you sent to Transdanubia? A. Yes.

Mr. Burling: I object on the ground that the document is the best evidence. And I have no objection to the offer of the document.

Mr. Gallagher: All right, sir. We will offer the document.

It is in his longhand writing (indicating). Can Your Honor read it?

1499 (The document referred to was received in evidence as Plaintiff's Exhibit No. 91.)

By Mr. Gallagher:

Q. I now show you Plaintiff's Exhibit 92, a cablegram addressed to Opel, West Palm Beach, Florida, signed Transdanubia Bauxit, and ask you if you can state what that cable is? A. That seems to be the answer to this wire of mine.

Q. Will you read for the record what that has to say?

Mr. Gallagher: First I will offer the cable, and then will you read it so the record will reflect it?

I offer Plaintiff's Exhibit 92.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 92.)

By Mr. Gallagher:

Q. Now will you read into the record the cable? A. The cable is addressed to me at West Palm Beach, Florida, and signed Transdanubia, and it reads—

Q. What date, Mr. von Opel? A. It is dated May 27, 1941. It reads:

"Two possibilities for solution are offered—

"First, Count Hadik willing to lease mines for five years, rent one pengos twenty-five per ton, makes all investments and takes over contract Giulini. Will start with works at latest 10th June. Stop.

1500 "Second, we could raise a loan of forty thousand pengos for three years at 6 per cent. Stop.

"Giulinis feeling inclined to give amnesty for the failure of delivery if we start with it until 15th July. Stop.

"We shall do our best in order to choose the most advantageous form. Should feel obliged to hear your opinion.

"Transdanubia Bauxit."

Q. All right. Just a moment.

After you received that cable, did you send a wire giving your opinion and directions? A. I remember I just repeated my former order.

Q. I now show you Plaintiff's Exhibit 93 and ask you if you can identify what that is? A. That is in my handwriting, a draft in reply to the cable on the other side.

Mr. Gallagher: I now offer Plaintiff's Exhibit 93, which is the reverse side of the cable which is Plaintiff's Exhibit 92.

(The document referred to was received in evidence as Plaintiff's Exhibit 93.)

By Mr. Gallagher:

Q. Will you read for the record what the cable is that you sent? A. It is addressed to Dr. Timar, my 1501 lawyer in Budapest, and it says:

"Suggest accept Hadik offer provided Giulini agrees, and our terragium safeguarded. Hadik ought to guarantee around 40,000 tons yearly. Try to raise terragium or get a true percentage of profit."

Signed "Opel."

I might explain for the record that "terragium" is a fee, a kind of royalty paid to the owner of mineral rights, if a mine is operated by some other party.

Mr. Burling: Mr. Gallagher, may I request that you produce the enclosures which are referred to from Transdanubia of March 12, 1941? The letter discloses, on its face that enclosures were with it, and the exhibit you have offered is therefore incomplete on its face.

And I move to strike, unless you do give us enclosures.

Mr. Gallagher: Where are you talking about?

Mr. Burling: The penultimate paragraph, the second sentence—

"From this letter and enclosures you will see that all conditions are fulfilled to meet the contracts and to let bloom the enterprise."

1502 Mr. Gallagher: Your Honor, Mr. Burling is certainly taking a peculiar evidential view. Yesterday he introduced a document filed at the Treasury Department and which referred to six enclosures which he said could not be found.

The Court: Do you have the enclosures?

Mr. Gallagher: No, I do not, Your Honor. This letter is merely a recapitulation of what transpired before.

The Court: The objection will be overruled, and it will be received for what it is worth.

(The letter heretofore offered and received on page 1499 hereof, remains in evidence accordingly.)

1503 Mr. Burling: Will you identify the book.

Mr. Gallagher: I am going to identify the book in just a moment.

By Mr. Gallagher:

Q. I show you Plaintiff's 94, Mr. von Opel, particularly pages 24 and 29 thereof, and ask you whether or not those are the originals of the pages of which Mr. Burling showed you the photostats, and on which, with respect to the years '40 and '41, and of Uebersee, and ask you whether or not you can state what this book is.

Mr. Burling: Is this an original of a Defendant's Exhibit?

Mr. Gallagher:

Mr. Gallagher: This is the original of your exhibits, yes.

By Mr. Gallagher:

Q. These are the original pages 24 and 29, Mr. von Opel. Will you state what those pages are? Mr. Burling asked you to refresh your recollection. He showed you two defendant's exhibits which were the photostats of pages 24 and 29 of this Uebersee book, and he pointed out to you that at the end of the year 1940 the balance there showed 102,360 francs, is that correct? A. Yes, on current accounts.

Q. And he showed you from his photostat of 1504 page 29 that that figure had increased to— A. 109,000.

Q. 918.50, is that correct? A. That's correct, yes.

Q. Those are francs, are they not? A. Swiss francs, yes.

Q. Will you explain what that increase was? A. I already mentioned that at the time Mr. Burling asked me, it reflects a payment made on March 10, '41, to the Budapest lawyers, a payment to the amount of about \$1,600.

Q. I now show you Plaintiff's 95.

Mr. Burling: I object to counsel showing a book unless he established what the book is, and that the witness has personal knowledge of it, unless it is a book which we have ourselves previously put in evidence.

Mr. Gallagher: We are again faced with the same question, Your Honor, that it is another Uebersee finance book produced in response.

Mr. Burling: Counsel does not know whether it is a Uebersee book or a book which Henggeler picked up in the street of Zurich. Counsel has no personal knowledge of it, nor does the witness.

The Court: As I understand the rule, it is that in the absence of a stipulation, the books have to be proved as authentic books.

Mr. Gallagher: This is a pretty late time, Your Honor, for them to raise any question about books that we produced in response to Court order several months ago.

The Court: They may be produced. You see, I have to go by the rules of evidence, there is nothing else I can do. The mere production by one party does not authenticate the books unless there is a stipulation or proof of it. I have to sustain the objection.

By Mr. Gallagher:

Q: Mr. von Opel, can you state from your own recollection when that payment was made to— you said it was to Dr.— A. Salusinszky Gyula.

Q: Can you state when in 1941 you made that payment to him? A. I did not make this payment, I already had left at the time. I saw from a slip, from an accounting voucher in the records, that the payment was made to the lawyers.

Mr. Burling: I move to strike any testimony of this witness concerning what he saw on a slip in counsel's office.

The Witness: I personally have no knowledge of it.

The Court: All right. Sustained.

By Mr. Gallagher:

Q. How much was the payment, do you know? A. About 7,000 Swiss francs.

Q. Is that about \$1,500? A. About \$1,600.

1506 Q. Do you know what the payment was for? A.

The lawyers all through the years '39 and '40 received about \$200 monthly for legal fees, office rent and expenses connected with operating the office of Transdanubia.

Q. Now, Mr. von Opel, Mr. Burling asked you about the posting of some collateral by Uebersee with a Swiss bank in guarantee of a loan or security for a loan made by Transdanubia in Hungary from a Hungarian bank during the 1930s, and an increase of several hundreds of dollars in 1940. I will ask you whether or not that collateral was returned by the Swiss bank to Uebersee. A. The collateral was released.

Mr. Burling: Will you fix the period.

Mr. Gallagher: In November, 1942.

Mr. Burling: I object to that on the ground that the witness could not have any personal knowledge of that.

Mr. Gallagher: You have already, as I recollect, Mr. Burling, in the course of this cross examination yourself taken the position that the loan was, the cancellation of the security took place in 1942.

Mr. Burling: I am not discussing, if Your Honor please, what my position is, I object to this witness testifying about something he obviously has no personal knowledge of. The testimony is in November, 1942. This witness was in internment camp in the United States, and of course we know what went on.

1507 Mr. Gallagher: Do we understand your position then to be, Mr. Burling, that collateral was posted in security of a loan prior to the war, and that there is nothing further in that respect, that we are to understand the situation is to stand, that the collateral is still sitting in Switzerland?

Mr. Burling: My position, if Your Honor please, is that this witness merely should not be allowed to testify about something which patently he has no personal knowledge, whatever, of.

The Court: I will sustain the objection, if he did not have personal knowledge.

Mr. Gallagher: We will pass that for the time being, Your Honor.

By Mr. Gallagher:

Q. Did you ever receive any income from Transdanubia?

A. No.

Q. To your knowledge did Transdanubia ever receive—Uebersee ever receive any income from Transdanubia?

A. No.

Q. Did you ever give any orders or direct anybody with respect to the operation of Transdanubia from May, 1931, until the present time? A. No, I did not.

Mr. Ingoldsby: May, 1941.

1508 By Mr. Gallagher:

Q. May, 1941, until the present one. A. '41, yes.

Q. Did you ever give any directions to any agent or authorize anybody to operate these mines for you subsequent to May, 1941? A. No, I did not.

Q. Did you, to your knowledge, did Uebersee ever authorize? A. No, I did not.

Q. Any operation of the mines. I will ask you this, who in Uebersee was the person who handled the Transdanubia situation? A. I was solely handling it, except this credit arrangement was, of course, made through banks.

Q. Directing your attention for a moment back to October 5, '31, did you have any conversations on that date with your father to the effect that you would pre-date the gift agreement when you returned to Germany? A. No, definitely not.

Q. And did you have any conversations with your father on October 5, '31, as to all the advantages that would come to you if you waited until you returned and signed it? A. There was no advantage, there was only a great danger that the loophole in the law would be closed.

1509 Q. Was the gift by your father to you reported to the German authorities? A. Oh, definitely, yes, in various ways.

Q. Will you explain the ways. A. First, within the limit permitted by German regulations, within three months it was reported as a gift and a gift tax of 2,000,000 R.M. was paid for it. This report was filed on January 2, 1932, just at the end of this three-months period. Furthermore, those 600 Opel shares were for every year shown on my father's property tax declaration, and of course after the gift to me it was not shown any more. In addition I could say this gift is, of course, mentioned in my father's last will.

Q. When is the date of the will? A. The last will was filed in 1938.

Q. Turning again to the question of the right to a Niessbrauch, if your father had had any income out of the gift agreement, would that have shown up in the German records somewhere? A. Oh, definitely, that would have shown up in three ways; at least. First, he would have to file any income with the Foreign Funds Control; even a claim to an income he would have had to file. Second, any income out of it he would have to report as an income under the income tax regulations. And then even any Niessbrauch right under German regulations is regarded as property right and reflected in a property tax assessment.

I think I have to make this point clear. For instance, if a person receives, let us say, 5,000 marks out of a niessbrauch, then this figure of 5,000 marks would be capitalized and he would have to declare a property of, let us say, 100,000 R.M., and out of this property he then would have to pay his property tax of about one-half of one per cent.

And, if I may say, as the niessbrauch was conditional niessbrauch, only a niessbrauch conditioned upon the distress of my father, he had not to report this in his property tax declaration.

Q. Were you ever directed by your father or mother

as to what you were to do with the proceeds of the gift?

A. No.

Q. Were you ever asked by your mother or father to pay them any dividends or any other income? A. No.

Q. Did you ever pay them any dividends or income out of this gift? A. No.

Mr. Gallagher: That is all.

Recross Examination

By Mr. Burling:

Q. Mr. von Opel, you testified on redirect that
1511 you filed Plaintiff's 83-A, which is called in German,
abmeldung. A. Yes.

Q. And that is translated as "Notice of Departure." A. Yes.

Q. You filed a statement indicating that you were departing. A. It shows that I am departing to Detroit, United States.

Q. In December, 1929. A. On December 12, 1929.

Q. And it shows you intend to remain abroad how long? A. It doesn't show anything about it.

Q. You know, do you not, that the rule is that, and was at that time, that a German leaving his place of residence for a period of more than a short visit, I think it is more than two months, was required to file one of these even though he intended to return to his domicile? A. Yes, that is possible.

Q. You know that's the fact, don't you? A. I don't know the law in this respect. Everybody changing residence had to report.

Q. You testified concerning your trips into Germany after October 5, 1931, and said that between October, 1931, and the end of 1931 you were in Germany 10.1
1512 per cent, is that right? A. Yes.

Q. And that adds up to a total, therefore, of more than a year. Ten percent of ten years, is one year, is it not? A. Yes, mathematically speaking, yes.

Q. You will agree, will you not, that you never indicated at any time during the alien enemy proceedings that you were in Germany any such amount of time.

Mr. Ingoldsby: I object to that question, I think it is much too broad, Your Honor.

Mr. Gallagher: We are again back to the point that we do not know what he stated in the missing hearing, either.

The Court: He is asking about his recollection. Do you have any recollection in that regard?

The Witness: I beg your pardon?

The Court: Do you have any recollection as to what you said at the hearings as to the time you were in Germany?

The Witness: At the time of the hearings I was deprived of all my files, I could not reconstruct any movement of mine anywhere. I had no files at my disposition.

By Mr. Burling:

Q. And you were not able to remember that you spent many weeks in Germany in the Deku proceeding, and many weeks on these other proceedings that you have spoken of? A. I think I have stated that I went to 1513 Germany for business reasons, and I think even in the memorandum I wrote, in addition to the hearings I think I filed a memorandum, and in this memorandum I tried to reconstruct as good as I could at the time, without any files and records, for what purposes I had gone to Germany.

Q. You filed that memorandum about a year after the hearing, did you not? A. I think it was in connection with the re-hearing. But I think even for the first hearing a memorandum was filed, if I remember correctly. I think I filed a memorandum for each hearing. Mr. Burling

Q. And at no time did you indicate, did you, that you had been in Germany for a period, or a series of periods, which would add up to a year, isn't that true?

Mr. Gallagher: Mr. Burling, I have to object to that; would not the record be the best evidence?

The Court: If he has any recollection of it, he may answer. I think the record might refresh his recollection.

The Witness: I was asked in a round-about way. As I told you, I had no opportunity to exactly figure that out, and in fact it took me even now with these records about three weeks to reconstruct these exact percentages.

By Mr. Burling:

Q. You identified a book of accounts this morning as your personal book of accounts, is that right? A. Yes.
1514 Q. Is the book kept in your handwriting? A. No, sir.

Q. Who kept it, if you know? A. Mr. Gaeng, the accountant of Overseas.

Q. When did you lay eyes on it for the first time? A. When the books arrived here in the United States upon court order.

Q. You never saw it before you saw it in Mr. Gallagher's office? A. No, I did not.

Q. Will you tell the Court how you know it is your book of accounts if you never saw it before just recently? A. Because it must be my book of accounts, because it can not be an Overseas book of accounts.

Q. It is a deduction of yours? A. It is a deduction, but a very logical deduction.

Mr. Burling: At this point, if Your Honor please, I move to strike this witness's testimony concerning this book.

Mr. Gallagher: They have already introduced photostatic copies from that exhibit on that very point.

Mr. Burling: We did that on representations of counsel that it was a book of accounts of the corporation.

Mr. Gallagher: Mr. Burling, you keep repeating that, that some letter we have not seen made some such statement.

The Court: Let me see. Were you familiar with 1515 the handwriting there?

The Witness: I know Mr. Gaeng's handwriting, certainly.

The Court: You have seen him write from time to time, seen books in which he wrote?

The Witness: No, Your Honor, I wouldn't go so far.

Mr. Gallagher: Your Honor, the books themselves are the best evidence, because they show that they carry in it what his assets are in Uebersee.

Mr. Burling: I submit, Your Honor, a completely unidentified book cannot authenticate itself by what it says about itself.

The Court: Wait just a minute, let me find out from the witness what he knows about it. The handwriting in there is the handwriting of whom, do you say?

The Witness: Of Mr. Gaeng.

The Court: Did he work for you or Overseas, or both, or whom?

The Witness: Since 1931, yes.

The Court: Whom did he work for?

The Witness: He did all the accounting work for me personally, for Fripco, and for Overseas.

The Court: What is there in this particular book that you identify as your own that convinced you it's with relation to your accounts and not Overseas?

The Witness: Because it shows all the transactions 1516 which I had made in the United States and in Switzerland, reflects those transactions. It shows all those transactions.

The Court: It has transactions personal to you in which Overseas were not in any sense interested?

The Witness: My personal transactions, yes, sir.

The Court: I mean it has some of your personal, in which Overseas had no relation whatever?

The Witness: Yes, that is correct.

The Court: I think that makes it circumstantial evidence.

Mr. Burling: May I inquire—I am not sure the witness understood your question.

Mr. Gallagher: I think he did.

Mr. Burling: May I inquire.

The Witness: May I say a word, Your Honor?

The Court: Yes.

The Witness: Defendant asked not only for the books of Overseas, but as far as I remember also for the books of Frima, and for this reason we gave them my personal books because they are the forerunners of Frima.

The Court: That is another point.

The Witness: For two years.

The Court: The lawyer can argue that later on. The thing we are trying to find out now is the identification of these which you talked from.

Mr. Gallagher: Your Honor, the only relevancy to 1517 this whole thing with respect to these books is simply the mystery that Mr. Burling arose with the word "Consortium O." We are merely explaining it for that purpose. If he wants to strike all his testimony and his exhibits with respect to those two pages, we can dispose of the exhibits. That is the only pertinency.

Mr. Burling: I object to the testimony of this witness, if Your Honor please, that it is his personal book of account. I agree with Your Honor that if there is a transaction of Fritz von Opel which is not a transaction also of Overseas, that would be circumstantial, to indicate it is. I wish to show the book to the witness and ask him to point out the transaction.

Mr. Gallagher: Is that the dollar book or the Swiss book? That is the dollar book.

By Mr. Burling:

Q. I will show you now Plaintiff's Exhibit 85 and ask you to point out the transactions which are personal to you, and in which Uebersee has no interest—had no interest. A. It is better, Mr. Burling, to use the dollar book, because all those dollar amounts were not transferred to Overseas; we started with the Swiss francs amount.

Q. Wait a minute. I want you to show me in Plaintiff's Exhibit 85, which is the book which defendant referred to—

Mr. Gallagher: No, we referred to the dollar book.
1518 Mr. Burling: I am sorry.

By Mr. Burling:

Q. All right, I will show you Plaintiff's 84, which was also referred to by defendant, and ask you to show the transactions in which Uebersee had no interest. A. All those American transactions at the time of '31, all dollar transactions Overseas had no interest in.

Q. Just show me. A. It is the entire book, Mr. Burling.

Q. Show me one transaction in which Uebersee has no interest. A. The entire transactions.

Q. Show me one.

Mr. Gallagher: All of them.

Mr. Burling: I want to see one, please.

The Witness: Take, for instance here, November 9, 1933; there a block of Harvard shares is acquired, 18,160 shares of Harvard Brewing stock.

By Mr. Burling:

Q. And that stock was transferred to Overseas, was it not? A. That stock was transferred to Overseas in 1935, two years thereafter. For the time being it was kept on my books, or Frima's books. You see, these books are the forerunners of Frima. They were acquired through 1519 Ladenburg, Thalmann & Company, New York.

Q. You have no personal knowledge, do you, of whether Bebersee maintained records, tracing the assets which were ultimately transferred to it, all the way back to the original purchase by you? A. Oh, certainly, this book ends up with Frima, and then Frima then transfers everything, sells everything to Overseas in the end of 1935. He can show you every single transaction which you wish to see.

Q. Will you explain, Mr. von Opel, on the assumption that Plaintiff's Exhibits 84 and 85 are your books of account, why there is an account representing 80 per cent of the principal of the gift of October 5 which is labeled Consortium O? A. I explained to you, I never have seen that account. Which figure you mean—you are again referring to this figure of 2.6 million; that is not an income account.

Q. I said principal, now. I am changing my question. I first asked you about income, and you pointed out to me that that could not be income. I now ask you if that is not 80 per cent of the principal. A. No, definitely not. It is the entire hundred per cent.

Q. What is the meaning of "Consortium O"? A. I tried to explain that to you, Mr. Burling, those accounts were in the first year kept under my own name, as you see in the balance sheets of Overseas. In the second year 1520 it was called Consortium O prior to the formation of Frima.

Q. That is my question, why was it called—have you any knowledge, or can you give any explanation as to why it

was called "Consortium O". A. Because I wished that my name not be shown on the books. In the first year it was shown, in the second year it was called "Consortium O", and the third year it was called Frima. It was the purpose of forming the Firma corporation that my name should not appear on the books.

Q. Why were you anxious that your name should not appear on the books that were maintained in Switzerland? A. For several purposes, Mr. Burling.

Q. What were they? A. Mainly, as you know, at this time I feared some action by the Nazis Government, and I wanted to protect myself as well as I could.

Q. You feared action by the Nazis Government in the year 1932, did you? A. Pardon me, Mr. Burling, in the year '32 it is still under Fritz von Opel; and then it appears under Consortium in '32, and in '33 it is then called Firma. I think that is the sequence, Fritz von Opel, Consortium, and Firma.

Q. Why did you call yourself a syndicate? A. That is not a syndicate. It is called Consortium.

1521 Q. Consortium is a syndicate, is it not? A. It is not a syndicate, it is a consortium. By using another word.

Q. The word consortium means syndicate, does it not? A. Consortium means—I discussed this problem with two Swiss people, they told me that generally in Switzerland any forerunner of a corporation is called consortium.

Q. Did you hear Dr. Frankenberg testify on this subject? A. I think I did.

Q. Did he not say it was a small group, or a syndicate? A. Yes, it generally is called this.

Q. Will you explain why your account was carried under a name which indicates a small group or syndicate? A. Because it was supposed to go into Firma, and Firma, as you know, means—is an agent of mine, an application of mine and my wife's name. It is Fritz-Margot, abbreviated.

Q. The consortium is you and your wife, is that it? A. Yes, the corporation.

Q. No, I am talking about the consortium. A. In a strict sense those assets did, of course, not belong to my wife.

Q. Isn't the consortium you, your father, and your mother? A. No, definitely not.

Q. You are absolutely sure of that? A. Absolutely sure.

1527. DANIEL GROS, was called as a witness on behalf of the Plaintiff, and having been first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Boland: Your Honor, while this witness understands English fairly well, he does not speak English fluently and would like very much to use Mr. Laufer as interpreter during the course of his interrogation. I have spoken about this with Mr. Laufer, and it seems to be agreeable.

The Court: Did you understand the nature of the oath you took?

The Witness: Yes.

The Court: You do not need that interpreted to you in German!

The Witness: No, I don't.

(Accordingly, the witness was examined and testified through the interpreter, Mr. Joseph Laufer, as follows:)

By Mr. Boland:

Q. Will you state your full name, please. A. Daniel Gros.

Q. What is your business or profession? A. Attorney at law.

Q. And where do you live? A. In Wiesbaden.

Q. Is that in Germany? A. Yes.

Q. What is your age? A. 48 years of age.

Q. Will you describe briefly your education? A. I passed the German examination for admission to universities. I then studied economics and business administration. And I terminated my studies after obtaining a degree in business administration and doctor of political science. I then studied law and took my first and second state bar examinations.

Q. And how long have you been practicing law, Doctor? A. I began practicing law at the end of 1933.

Q. And where did you start to practice law? A. In Berlin.

Q. And how long did you practice in Berlin? A. Until 1943 where I was bombed out completely with respect to my office and my home.

Q. And what was the general nature of your practice? A. I was engaged in general practice with the exception of rent cases, divorce cases, and cases involving traffic violations.

Q. And after 1943 what did you do then, Doctor? A. I moved to Wiesbaden but immediately thereafter was called up for military service.

Q. And how long did you remain in the army? A. Until I was made a prisoner of war.

Q. And when were you taken as a prisoner of war? A. On April 27, 1945.

Q. And how long did you remain a prisoner of war? A. About two months.

Q. And then what did you do? A. I then returned to Wiesbaden and made application to be readmitted to the bar.

Q. And when was this? A. That was in the fall of 1945.

Q. Were you admitted to the bar? A. Yes, I was admitted as attorney and simultaneously as notary public.

Q. And then what did you do? A. I did not engage in the practice of law for the time being, but a judge in the law court of Wiesbaden.

1530 Q. How long did you serve as judge? A. About three quarters of a year.

Q. Who appointed you? A. The minister of justice of Hesse, with the approval of the military government.

Q. Is that the American Military Government? A. Yes.

Q. When you left your practice to enter the army, what did you do with your files and records? A. When I was called up I had already—I had no longer any files. For safety's sake I had removed my files as early as August, 1944, to Belitz, near Berlin.

Q. And after you served in the army did you make any attempt to recover your files and records? A. Yes, but it was difficult. Belitz is situated in the Russian zone of occupation. And I found out that the building to which I had removed my files had been occupied by the Russian Kommandatura after the city had been taken. And I was advised that nothing was left of my files.

Q. Doctor, were you ever a member of the Nazis Party? A. No; for the very reason that I was not a member of the Nazis Party I was appointed a judge, because there were very few judges whose record was unblemished and who were not members of the Nazis Party.

Q. Were you employed as an attorney by Wilhelm 1531 von Opel in the year of 1935? A. Yes.

Q. What was the purpose of your employment, Doctor? A. Wilhelm von Opel and Martha von Opel had made a gift of shares to their son by a gift agreement of

1931.

Mr. Burling: I object and move to strike as hearsay. The witness cannot testify.

The Court: Yes, that is right.

Mr. Boland: Your Honor, this witness has not testified in fact that a gift was made.

The Court: I will disregard that. The Witness has told him.

Mr. Boland: Read his answer back.

(Accordingly, the Witness's last answer was read by the reporter.)

The Witness: And a usufact was provided therein for the parents, and I was given the job of presenting to the German authorities an agreement between the parties to the effect that this stipulation was nugatory.

By Mr. Boland:

Q. Doctor, what steps did you take in carrying out this assignment of Wilhelm von Opel? A. I first prepared a memorandum of law.

Q. I show you now, Doctor, Plaintiff's Exhibit 96-A and ask you whether or not this is a copy of the memorandum to which you have just referred. A. Yes.

Q. And this memorandum was prepared by you? A. Yes.

Q. What was the purpose of this memorandum? A. By this memorandum I tried to become clear in my own mind concerning every possible legal interpretation of the agreement in order to be guided by it with respect to the steps which I would take before the German authorities.

Q. Doctor, directing your attention to the last line of the Exhibit—

Mr. Burling: I object to any reference to the attention of a document which is not in evidence.

Mr. Boland: I offer it.

Mr. Burling: I object to the document, Your Honor, on the ground that it contains extensive hearsay. The witness

has testified that he was retained in 1935. There is a great deal of material relating to facts occurring in 1931 with which he could have no possible personal knowledge. He must be referring to—

Mr. Boland: He has testified as a lawyer he took the gift agreement and made a legal analysis of it.

The Court: Are you going to show that this was submitted to Wilhelm von Opel?

Mr. Boland: I will, Your Honor.

1533 The Court: All right.

Mr. Burling: My argument, Your Honor, is that this man can no more testify to what happened than it would be proper for me to take the stand and testify that in my opinion after studying the case the gift agreement is a sham.

The Court: As I understand it, he is seeking to establish that this opinion was handed to Wilhelm von Opel and he later took some steps in reliance upon it, is that not what you are going to do?

Mr. Boland: Yes, Your Honor, this has got nothing to do with the establishment of the gift agreement as such. We are not using him as a legal witness or as an expert to testify that a gift was in fact established by interpretation.

The Court: That would be proper.

Mr. Burling: If Your Honor would restrict the admission of the document so that it is not evidence of the facts set out in it but merely evidence that it was prepared, I withdraw my objection.

The Court: I certainly will not draw any conclusions as to the fact of the execution of the agreement itself or anything as to which this man had no knowledge. I am admitting it as a memorandum of law that was handed to that I understand you offered to connect up with the fact that it was handed to the alleged donor, and that he took certain actions in reliance upon it.

1534 Mr. Boland: As a matter of fact, Your Honor, we will bring out, and the defendant well knows, that this was filed in the files of Wilhelm von Opel.

The Court: I will accept it, then, subject to that understanding.

(Accordingly, the document above referred to was marked Plaintiff's Exhibit 96 and received in evidence.)

By Mr. Boland:

Q. Directing your attention to the last sentence of this exhibit, it states, does it not, that a draft of an agreement was attached? A. Yes.

Q. Do you have a copy of that draft? A. No.

Mr. Boland: By the way, I might also state for the record, Your Honor, that that last exhibit was Defendant's Exhibit 31 in the deposition in which this witness was interrogated in Germany by Mr. Baum and Mr. Laufer.

Mr. Burling: That is in no way binding on us here; what we use in cross-examining a witness or depositions is immaterial to the proposition here.

The Court: Well, let's see what is asked about it. If you want to object, I will rule on it.

By Mr. Boland:

Q. Doctor, I will show you now Plaintiff's Exhibits 7-A, 8-A, and 9-A, which have been previously identified as drafts and correspondence of Dr. Hackenburg, and ask whether or not you had copies of these exhibits before you at the time you made your draft of July 27, 1935. A. I can't state that with absolute certainty, but I believe rather definitely that I did not have them; otherwise I would have referred to them in my memorandum in one line or another.

Q. After having prepared the memorandum of July 27,

1935, Doctor, what was the next step you took in this connection? A. Some time later I filed an application with the Foreign Exchange Control office attached to the original treasury office in Wiesbaden.

Q. At approximately what date was this filed, Doctor? A. A few months later.

Q. Doctor, I show you now Plaintiff's Exhibit 97-A, and ask whether or not this is the application to which you refer. A. Yes, that's the one.

Q. And was this prepared by you? A. Yes.

Q. What was the purpose of this application, Doctor? A. I wish to advise by this application the Foreign Exchange Control office of the fact that the parties to 1536 the agreement consider the usufruct provisions as nugatory, and I requested to approve the position of law which I had taken in this application for reasons of legal certainty.

Q. Was this an application for a license, Doctor? A. No, I solely requested a statement of clearance in the interests of legal certainty.

Q. So that it was not an application for a license? A. No.

Q. Was there a draft attached to this application, Doctor? A. Yes.

Q. Is this a copy of the draft that was attached to the application? A. Yes.

Q. What is this draft, Doctor, what does it purport to be? A. This draft is meant to make it clear that the parties, as stated in the penultimate paragraph thereof, have agreed to consider the stipulations of the usufruct agreement no longer effective.

The Court: I think we had better adjourn now until two o'clock.

(Accordingly, at 12:30 p.m. the noon recess was taken, until 2 p.m.)

1537

AFTERNOON SESSION

Thereupon, Dr. DANIEL GROS resumed the witness stand and was examined and testified further, through the interpreter, Mr. Joseph Laufer, as follows:

Direct Examination (Resumed)

By Mr. Boland:

Q. Doctor, you have testified, have you not, that the draft attached to Exhibit 97-A was a draft of an agreement in connection with waiving the Niessbrauch? A. I did not say that this draft was a draft for a contemplated waiver of the usufruct, but was a draft of a statement to the effect that the parties considered the usufruct as being no longer in effect.

Q. Was this draft actually signed by the parties, Doctor? A. No.

Q. Did the parties intend to sign this draft? A. No.

Mr. Burling: I object on the ground that it is hearsay.

Mr. Boland: I don't think it is hearsay at all, Your Honor. He was the attorney for these parties.

The Court: What was the question?

Mr. Boland: The question was, did the parties 1538 intend to sign this draft.

The Court: I don't know that he would know their intentions, would he?

Mr. Boland: He was their attorney.

The Court: I don't believe he would know their intention, unless he talked to them.

Mr. Boland: He prepared the draft, Your Honor.

The Court: I don't believe I can let him give his conclusion as to whether they intended to sign it or not, without some facts from which we can draw that deduction.

Mr. Boland: All right, sir.

By Mr. Boland:

Q. What was the purpose of this draft? A. As I already stated, the purpose of this draft was to advise the Foreign Exchange Control authorities of the fact that the parties themselves had agreed to consider this usufruct as pointless.

Q. During the course of your representation of Wilhelm von Opel in connection with this matter, did you have conversations with Wilhelm von Opel? A. Certainly, often.

Q. Did you have conversations with Marta von Opel in connection with this? A. Yes.

Q. Did you have conversations with Fritz von Opel? A. Yes.

Q. What was the nature of your conversations?

Mr. Burling: I object to that, Your Honor, on the ground that it is clearly hearsay. And I would like to point out in further support of my objection that all three of the persons named have been interrogated, either here or by deposition, called as witnesses by the plaintiff. I do not believe that this witness should be allowed to testify as to what Wilhelm von Opel said to him, when Wilhelm von Opel himself was a witness and could have testified.

The Court: Well, of course, that would be a point you could argue, as to the weakness of his testimony. But wouldn't what he said with regard to his attitude in creating what you call a sham be material, everything he said in connection with it, as a sham when he had no motive, to deceive this Court, for example?

Mr. Burling: I submit, Your Honor, the evidence has established that he did have a very strong motive to deceive the German Government.

The Court: I am talking about this case. It would be a statement accompanying the act, in explanation of his attitude at the time. You can argue the weakness of it, but I think the testimony is proper.

Mr. Boland: Will you read the question, please?

The Reporter (reading): "Question: What was
1540 the nature of your conversations?"

The Witness: The substance of these conversations was that all parties explained to me that they wished to consider the usufruct provisions as pointless.

By Mr. Boland:

Q. In your conversations with Wilhelm, Marta, and Fritz von Opel, did they indicate, did any one of the three indicate to you, that they in fact considered the usufruct as void? **A.** Yes, sir.

Q. Does this draft reflect that the parties had so agreed? **A.** Yes; in the penultimate paragraph it is stated expressly—

"We declare that we consider the provisions concerning the usufruct set forth in the gift agreement as no longer effective."

Mr. Boland: I offer Plaintiff's 97.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 97.)

By Mr. Boland:

Q. I show you now Plaintiff's Exhibit 98, and ask whether or not this letter was prepared by you. **A.** Yes.

Q. Would you state the purpose of this letter? **A.** In this letter I express my position with respect to one statement contained in the gift agreement, which reads as follows: "The usufruct in the shares is not assigned."

It is the purpose of my letter to state with legal arguments that by this phrase, according to the provisions of German law, a usufruct cannot be reserved.

Q. Had this question been raised by the German authori-

ties! A. Yes, by Assessor Dr. Renfrop, to whose attention this letter is directed.

Mr. Boland: I offer Plaintiff's 98.

(The document referred to was received in evidence as Plaintiff's Exhibit No. 98.)

By Mr. Boland:

Q. Doctor, I show you a letter that has been marked for identification as Plaintiff's 99 and ask whether or not this is a copy of a letter prepared by you. A. Yes, sir.

Q. And, in substance, is this the same as the application of October 8, 1935? A. Yes, it is the same thing.

Q. And is the distinction that this was sent to the national office of the foreign exchange agency? A. Yes, this letter was addressed to the national office in Berlin, whereas the other letter was addressed to the regional office in Wiesbaden.

Q. The other letter being Exhibit 97 (handing to the witness) A. Yes.

Q. Doctor, in the first paragraph of this letter—

Mr. Burling: Will you identify the letter, please?

Mr. Boland: This is 99, Mr. Burling.

Mr. Burling: Thank you.

By Mr. Boland:

Q. In the first paragraph of this letter I notice that a reference is made to a decision of December 13, 1935, of the regional revenue office, Frankfort-on-Main branch, and ask whether or not you have a copy of this decision? A. No.

Q. Do you recall the decision referred to in your letter of February 8, 1936? A. I do not remember with certainty this decision, but I conclude from the contents of

the letter of February 8, 1936, that the decision taken must have been in the negative.

Q. And how do you come to that conclusion, Doctor?
A. Because otherwise the statement of February 8, 1936, would have been unnecessary.

Q. And that is the reason, is it, Doctor, you wrote to the national office of the Foreign Exchange Agency?

1543 A. Yes, sir.

Q. I show you now, Doctor, Plaintiff's Exhibit 100, and ask whether or not this is a copy of a letter prepared by you. A. Yes.

Mr. Boland: It is Defendant's Exhibit 32 in the Wiesbaden depositions.

Mr. Burling: Thank you.

By Mr. Boland:

Q. Does this letter contain in substance the same arguments which you used in your letter of October 8, 1935, Plaintiff's Exhibit 97? A. Yes, sir.

Mr. Burling: I object to this. Again, clearly, it is a recital not only of legal arguments, but of facts of which this witness could not have any personal knowledge.

If it is stipulated it is not offered for the facts stated, but merely to show that the letter was sent, I have no objection.

Mr. Boland: We will stipulate that it is not offered other than to establish the fact that the argument was prepared by Dr. Gres and sent to the addressee of the letter, for the purpose of getting rid of the Niessbranch.

Mr. Burling: Thank you; that it fine.

1544 Mr. Boland: Where do we stand, Mr. Reporter?
The Reporter (reading): "Question: Does this letter contain in substance the same arguments which you used in your letter of October 8, 1935, Plaintiff's Exhibit 97?"

"Answer: Yes, sir."

By Mr. Boland:

Q. I note, Doctor, that this letter was addressed to the tax revenue office in Wiesbaden. A. Yes, that is correct.

Q. Was this letter actually sent to the tax office in Wiesbaden? A. I have, of course, no immediately recollection of its having been mailed; but if I see a letter from me, I assume that in the ordinary course of business this letter was mailed.

Q. What was the purpose of sending such a letter to the tax office, Doctor? A. The collector's office also was concerned with the usufruct in connection with a possible taxability of income derived from it, and the tax office had inquired of Wilhelm von Opel whether or not he had received any income from the usufruct.

Moreover, as I note from the contents of the letter, it was important for the collector's office with respect to the property tax.

Q. Doctor, did you take any action with the 1545 Reichsbank in connection with obtaining approval of the waiver of the Niessbrauch? A. Yes.

Q. When? A. At about the same time at which the collector's office addressed its inquiry to Wilhelm von Opel, an inquiry was made by the regional office of the Reichsbank in Wiesbaden.

Wilhelm von Opel advised me of the fact, and I advised him what to reply. And, as I recall, I sent him a draft of a letter.

Q. And was the letter in the nature of advice to Wilhelm von Opel? A. In this letter I suggested to Wilhelm von Opel how he should write to the regional office of the Reichsbank in Wiesbaden.

Q. And what was the general nature of your advice? A. The substance of my advance followed precisely the line which I had followed previously with respect to the col-

lector's office and the office of Foreign Exchange Control. And I remember that at the end of the draft, I had added:

"For any further information, please inquire of Dr. Gros"—that is, speaking to the Reichsbank branch—"inquire of Dr. Gros, attorney at law, who is handling the matter."

Q. Doctor, did the Reichsbank ask you for any
1546 information concerning this matter? A. No; but

I heard that the customs investigation office in Frankfort-on-Main had undertaken investigations on its own concerning this matter.

Q. Did the Reichsbank directorium in Berlin ask you for any information? A. No. I merely received one day a telephone call, according to which a certain Mr. Wilhelm, director of the Reichsbank, wished to talk to me in connection with the Opel matter.

Q. Did you ever go to see Director Wilhelm in connection with this matter? A. Yes, sir, several days after the telephone call.

Q. What was the date of your first visit to Director Wilhelm? A. I cannot immediately remember the date. But I will remember it as soon as my memory will have been refreshed by a letter which I addressed to Wilhelm in connection with the matter.

Q. I show you now Plaintiff's Exhibit 101.

Mr. Barling: By my silence, Your Honor, I don't want the record to indicate that I agree to the admissibility of this document.

Mr. Boland: I am merely identifying it. I have three documents to offer, as I recall.

1547

By Mr. Boland:

Q. I ask you whether or not this is a copy of your letter to which you have just referred? A. Yes, sir.

Q. Does this letter refresh your memory as to the date

of the conference with Director Wilhelm of the Reichsbank? A. Yes; I note from the letter that the conference must have taken place on June 27, 1935.

Q. What was the nature of your conference with Director Wilhelm?

Mr. Burling: I object, Your Honor. This is clearly hearsay; what some person named Wilhelm—not Wilhelm von Opel, but Wilhelm of the Reichsbank—said to this man.

And furthermore, if Your Honor please, the testimony of Wilhelm has been taken in this case and that is the proper way to find out what Wilhelm said.

Mr. Boland: Your Honor, if you will bear with me just a minute, in the first instance, we are not offering what Director Wilhelm said to Dr. Gros for the truth of what he asserted, but merely for the fact that he did say it, true or false. And the second statement is that there was a deposition taken from Director Wilhelm; he was brought here to Washington by the Government and subjected to examination; and we intend to make him a witness in this case and read in portions of his deposition. And 1548 this is merely to corroborate things in his deposition.

The Court: What do you seek to develop?

Mr. Boland: That Director Wilhelm, upon the presentation of Dr. Gros' application for approval of the parties waiving all rights in connection with the gift agreement, had admitted he had no legal basis upon which to oppose their doing exactly what they did.

And we think it is important, lest the Government argue it would be impossible for the parties to have agreed to waive, in the face of potential criminal prosecution under the Exchange Control regulations; and this would establish there was no fear of that.

Mr. Burling: That is my point, Your Honor—it is offered to establish that Wilhelm said this.

Mr. Boland: This is in corroboration of their own witness.

The Court: We can take it in turn.

Mr. Burling: The fact is that hearsay evidence is offered to corroborate another witness, and incidentally the deposition of Wilhelm will be contrary, I think, to what this witness will say; but you can't corroborate a witness by hearsay evidence. There is no such exception to the hearsay rule.

I submit this man can say what he said to Wilhelm, but it is pure hearsay for him to say what Wilhelm said to him.

1549 The Court: The only way in which he could say it, where it would have any relevancy, would be if it was communicated to any of the parties and they took any action in regard to it, or failed to take any action in regard to it.

Mr. Boland: It certainly was communicated to the parties, to all the parties to this agreement, and they were thoroughly cognizant of the fact that the German agencies would take no action on the waiver of the rights under the agreement.

The Court: Let me see if I comprehend the drift of this testimony. I want to be sure I do. You are seeking to establish that this Dr. Gros was employed for what purpose?

Mr. Boland: He was employed by Wilhelm von Opel for the purpose of obtaining the approval of the German Government to a waiver of whatever rights the father and the mother had retained in the gift agreement.

The Court: And he then wrote certain officers, and in the course of writing them he submitted the document which I think he didn't sign? Is that right?

Mr. Boland: I think that is right. And he also stated the parties had in fact agreed to a waiver of whatever rights they have.

The Court: Does this have any relation to his failure to sign? Is that what you are talking about?

1550 Mr. Boland: No, it doesn't, Your Honor. It isn't related to the failure to sign, at all.

The Court: He tells them what another man says. What relevancy does that have to any action they took? That is what we are trying to get at. Of course, his opinion is not controlling on me, if that is what you are offering it for.

Mr. Boland: No, Your Honor. I am offering it for the purpose of showing that the parties, as a result of the German inaction, the German Government's inaction, and the application for approval of the waiving of their rights, that the parties relied upon the fact that there was no further action to be taken by the German Government.

Mr. Burling: I will stipulate the German Government took no action with respect to this waiver or alleged waive.

Mr. Boland: And also that Mr. Fritz von Opel governed his actions accordingly.

The Court: Your point is that in so much as this Director Wilhelm of the Reichsbank—

Mr. Boland: Yes, Your Honor.

The Court: And what position had the Reichsbank?

Mr. Boland: Comparable to the Federal Reserve Board.

Mr. Burling: We contend his opinion had no effect whatever.

The Court: You expect to establish that this 1551 Reichsbank had a national position, and that he was an officer of the German Government? Is that right?

Mr. Boland: It is established in the deposition, upon questioning by Mr. Baum. He was their witness, and we are going to read that into the record.

The Court: And inasmuch as he, rightly or wrongly, took the position that no affirmative action was necessary by way of relinquishing this usufruct, that he took no action? Is that it?

Mr. Boland: Yes, sir.

The Court: I think it would be admissible.

Mr. Burling: If Your Honor please, my objection goes to hearsay. Why should this witness be allowed to testify

what Wilhelm said? Wilhelm himself has testified to what he said.

The Court: Well, it would be corroborative of it.

Mr. Burling: Isn't it hearsay, even if it is corroborative?

The Court: No, I don't think so. It is a fact. If somebody fails to take an action that he might otherwise take, it is competent. I might fail to take any action whatever, if I have certain information given to me by an official of the Bureau of Internal Revenue. And I might very well take different action if I did not have it.

The fact of the communication of that is a fact
1552 which is both relevant and material, I think. I will permit it, subject to your objection, and let you argue the deposition conflicts, if it does.

Mr. Boland: All right, Your Honor.

The Court: Tell him he may answer the question.

Mr. Boland: Will you please read the question, Mr. Reporter?

The Reporter (reading): "Question: What was the nature of your conference with Director Wilhelm?"

The Witness: Wilhelm referred to the position I had taken in the Niessbrauch matter, the usufruct matter, and then told me that their own lawyers had examined the matter and had reached the conclusion that my position was to be approved and that therefore my position was to be shared by their own lawyers, and that therefore no claim existed within the terms of the Foreign Exchange Control provisions of Wilhelm von Opel against Fritz von Opel.

After that, he said "Let's leave the legal consideration aside." And then he made lengthy statements to me, pointing out that in view of the very tight foreign exchange control position of the German Reich, Fritz von Opel should feel inclined voluntarily to make contributions of foreign exchange to help alleviate the emergency of the German Reich.